United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

Arthur Needles
Appellant, Pro Se
vs.
United States,
Dept. of Justice,
Bureau of Prisons, Et Al.

FEB 11 1974

74-1034

Original of
Brief for:

Motion for a Writ of
Habeas Corpus
to the United States
Court of Appeals,
2nd Circuit.

In The United States Court of Appeals
For the Second Circuit
New York, New York

Comes now Arthur Needles Appelant, pro se VS United States U.S. Dept of Justice Bureau of Prisons, et al	Docket No. ----------

MOTION FOR A WRIT OF HABEAS CORPUS

Your Appellant, proceeding in forma pauperous, comes now after exhausting all prior remedy, and seeks a writ of Habeas Corpus under the general rule of Habeas Corpus and Rule 2241.

Your Appellant after being denied in the Middle District of Pannsylvania, not because of lack of merit, but merely because of a denial of jurisdiction, and after exhausting in the Eastern District of New York, with the dismissal of the application by Judge Weinstien, hereby makes application to the Court of Appeals for relief as predicated by the statutes.

Appellant seeks a reversal of the conviction and vacation of the illegally obtained sentence, and damages to the extent of 164;110.00, one hundred sixty four thousand, one hundred ten dollars, as compensation for said unlawfull imprisonment.

Appellant submits copies of the original brief, as submitted to the Middle District of Pennsylvania, who denied for "alleged " lack of jurisdiction , and not for lack of merit.

Appellant also encloses the show cause order of Chief Judge Sheridan, and his Order denying, and the arbitrary order of Judge Jack Weinstien, from the "kangaroo court" of of the Eastern District, where your appellant exhausted all prior remedy. Your appellant trusts that this court will do the right and honorable thing in granting the Writ of Habeas Corpus, and any other relief it may see fit to grant.

~~#6~~

#1

UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
ex rel. ARTHUR NEEDLES,

Petitioner,

v. No. 1510 H.C.

UNITED STATES OF AMERICA,
DEPT. OF JUSTICE and
FEDERAL BUREAU OF PRISONS,

Respondents.

FILED

JUL

ORDER

Petitioner, Arthur Needles, presently an inmate at the United States Penitentiary, Lewisburg, Pennsylvania, having filed an in forma pauperis petition for a writ of habeas corpus in which he contends that his criminal conviction in the United States District Court for the Eastern District of New York is invalid because he was denied a speedy trial within the meaning of the principles enunciated in Strunk v. United States, No. 72-5521 (U.S. June 11, 1973); and a rule having been issued on respondents to show cause why the relief requested should not be granted; and the parties having submitted a return to the rule and a traverse in support of their respective positions; and it appearing that the petition is more properly addressed to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C.A. Section 2255;

It is ORDERED that the petition is dismissed.

Chief Judge
Middle District of Pennsylvania

Dated: July 20, 1973.

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
U. S. POST OFFICE AND COURTHOUSE
SCRANTON, PENNSYLVANIA 18501

DONALD R. BERRY
CLERK

IN REPLYING GIVE NUMBER AND TERM OF CASE AND NAMES OF PARTIES

October 16, 1973

#2

Mr. Arthur Needles
Noyac Road
Southampton, New York 11968

Re: Needles v. USA, et al
Habeas Corpus No. 1510

Dear Sir:

Receipt is acknowledged of your letter dated October 14, 1973, subject as captioned above.

Be advised that when a petition is filed in Court it becomes a permanent record of that office, and can not be transferred to another Court without a Court Order.

Yours truly,

Donald R. Berry

Donald R. Berry,
Clerk

DRB/hjh

~~#~~

Attempt to transfer record and brief to Eastern District of New York, from Middle District of Pennsylvania. 2A

#2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X
X

UNITED STATES OF AMERICA ex rel.
ARTHUR NEEDLES, :

Petitioner, :

-against- : MEMORANDUM AND ORDER

UNITED STATES OF AMERICA, : 73C 1494
DEPT. OF JUSTICE AND
FEDERAL BUREAU OF PRISONS, :

Respondents. :

- -X

A P P E A R A N C E:

Arthur Needles
Pro Se

Honorable Robert A. Morse
United States Attorney for the Eastern District
of New York
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201

WEINSTEIN, D.J.

(7)

2B

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

AND NOW IN THE UNITED STATES COURT OF APPEALS FOR THE 2nd. CIRCUIT

UNITED STATES OF AMERICA
ex rel

ARTHUR NEEDLES 69228-158 : NO. 1510
Full name and prison number
(If any) of Petitioner PRISONER OF
UNITED STATES OF AMERICA

v.

UNITED STATES OF AMERICA, DEPT. OF
JUSTICE, AND FEDERAL BUREAU OF PRISONS.
Name of Respondent

(PERSONS IN FEDERAL CUSTODY)

PETITION FOR WRIT OF HABEAS CORPUS

Instructions - Read Carefully

1. In order for this petition to receive consideration by the District Court, it shall be in writing (legible handwritten or typewritten), signed by the petitioner and verified (Notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear to which question any such continued answer refers.

2. Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should therefore exercise care to assure that all answers are true and correct.

3. If the petition is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay the fees and costs of the habeas corpus proceedings. When the petition is completed, the original and four copies shall be mailed to the Clerk of the District Court for the Middle District of Pennsylvania.

1. Place of detention UNITED STATES PENITENTIARY, LEWISBURG, PENNA.

2. Name and location of court which imposed sentence EASTERN DISTRICT OF NEW YORK (ANNEX) 900 ELLISTON AVENUE, 4th. FLOOR, WESTBURY, NEW YORK

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 70-CR-539

(b)

(c)

4. The date upon which sentence was imposed and the terms of the sentence:

(a) 3 Years Imprisonment, Adult Sentence, April 10, 1972. With jail time credit sentence was from February 1, 1972 to January 31, 1975. Sentenced under

(b) Title 26 U.S.C. not Title 18 U.S.C.

(c)

5. Check whether a finding of guilty was made

(a) after a plea of guilty XXXX (December 29, 1971)

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. If you were found guilty after a plea of not guilty, check whether that finding was made by

(a) a jury

(b) a judge without a jury

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES. Motion filed April 14, 1972
Motion argued December 4, 1972
Appel denied January 11, 1973

(8) If you answered yes [illegible]

(a) the name of each court to which you appealed:

i. UNITED STATES COURT OF APPEALS, 2nd. CIRCUIT, (DOCKET 72-1704)

ii.

iii.

(b) the result in each such court to which appealed:

i. APPEAL DENIED, CONVICTION AFFIRMED.

ii.

iii.

(c) The date of each such result:

i. JANUARY 11,1973

ii.

iii.

(d) If known, citations of any written opinions or orders entered pursuant to such results:

i. Petitioner encloses a Zerox copy of the "Law Journal" covering the opinions and order in this appeal.

ii.

iii.

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) I allege that on the basis of the recent U.S. Supreme Court decision of Strunk vs. U.S. June 11, 1973, that I, the petitioner am also being held in prison illegally. Strunk cited a period of 259 days between indictment and arrest. Petitioner cites a period in excess of 16 months. Petitioner was induced to plead guilty, after arbitrarily being denied a motion to dismiss on the basis of lack of prosecution, by the government.

Petitioner's defense evaporated after this unconsciencable delay by the prosecution. Petitioner was 14 months from arrest to indictment, due to the government's failure to prceed before a grand jury in that time, and petitioner was an additional 16 months to trail. Surely this negates the right to a speedy XXXXX trail as gauranteed by the 6th. Amendment of the U.S. Constitution.

(b) Although petitioner was denied a motion to dismiss in the District Court of trail, petitioner alleges that Strunk vs. U.S. opens the door as now specific guidlines and limitations are layed down, and petitioner, in view of these developments, seeks redress from this Court under 2241, in which any court can right a wrong. Petitioner is within the juristiction of this court, being incarcerated at Lewisburg, Pa. within the Middle District of Penna. Petitioner Maintains that at no time, and on no occasion throughout the entire proceedings from June 5, 1969 thru April 10, 1972 did he ever ask for any postponment or delay. If anything, at all times petitioner wished to, asked to, and made plain his desire to proceed forthwith. (See attached letter of April 19, 1973 returned to petitioner, and now resubmitted, with this petition.)

(c) Although petitioner possesses no transcipts or minutes of the more than 12 to 14 times he appeared for various reasons in court, petitioner was at all times ready to proceed, and on one occasion forced a two (2) day notice of trial the was postponed at prosecution behest. Petitioner managed to insert into the minutes on court appearances that he was ready to proceed at that instant.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Petitioner believes that this is covered in question #9 in which he unknowledgably combined allegation and fact. However to summerize:

1. Petitioner sought early trial at all times.
2. Government otained indictment on August 4,1970, 14 months after arrest.
3. Government delayed prosecution for 16 additional months, arbitrarily and prejudicaly waiting until petitionerhs defense evaporated.
4. Petitioner's defense witnesses numbering not less than (3)three, including John Olin, Olin-Mathison Chemical Corp. were no longer available to petitioner after this long, unwarranted delay.

(b) Only after petitioner was financially exhausted, domestically disenfranchised, and denied steady employment because of the volumous calander dates, unnecessarily called by the government, did the government then offer the deal to plead guilty to one count of a thirty count indictment, the least penalizing in fact, an assurance that the petitioner would not go to prison, and that the United States attorney would endeavor to obtain petitioner's illegally confiscated property returned to him, including $610.00 in currency, stolen by the Treasury agents at the time of arrest.

(c) PETITIONER'S two(2) codefendants sought dismissal at the same time as petitioner. They were grated dismissal on the grounds of lack of prosecution before Judge Jacob Mitchler, Eastern District.
Petitioner was denied before Judge Joseph Zavatt, who had been assigned to petitioners case(9)ninemonths before petitioner was indicted! Does not this court find that highly unusual?

[illegible] you filed previous petitions for habeas corpus, motions under Section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction? No, except to appeal the conviction on previously stated grounds.

12. If you answered "yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof:

i. Appeal to the 2nd. Circuit to take back guilty plea and stand trial on the entire indictment.

ii. _____

iii. _____

(b) the name and location of the court in which each was filed:

i. Court of Appeals, 2nd. Circuit, Foley Square, N.Y.C. New York

ii. _____

iii. _____

(c) The disposition thereof:

i. Appeal Denied.

ii. _____

iii. _____

(d) the date of each such disposition:

i. January 11, 1973

ii. _____

iii. _____

14. Has any ground set forth in (9) been previoisly presented to this or any other federal court by way of petition for habeas corpus, motion under Section 2255 of Title 28, United States Code, or any other petition, motion or application?

NO. Other than parallel remarks in appeal brief which was on rule 32D Petitioner believes. Prior appeal was to take back guilty plea and until Strunk vs. U.S. reopened the door recently, it did not take up the question of a prior denial of motion to dismiss for lack of prosecution, rather it attacked the broken promises and erroneous pre-sentence report.

The pre-sentence report, with which the frequency it is being attacked, is unfair and highly prejudicial in that it contains the wildest of allegations by people hostile to the defendant, but accepted as fact by the sentencing courts. Petitioner is sure that this court is aware of this. In the instant case petitioner enjoyed a vacumm period of more than 19 years, from 1950 to 1969 in which he was apparently inn limbo. This in fact was a constructive period of home building and family raising, but in the pre-sentence report, this period did mot in fact exist.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Enclosed is a copy of the "Law Journal" with opinions and order.

ii. _____

iii. _____

13. If you did not file a motion under Section 2255 of Title 28, United States Code, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

(a) Petitioner is not knowledgable enough about the law to determine the different applications of rules or sections. However, while ignorance is no excuse despite the complexities of modern law, petitioner is not asking for mitigation or reduction of sentence, as this will surely be mute by the time this petition is adjudicated. What petitioner asks is the same as applied to Strunk vs. U.S. a reversal of conviction due to the highly prejudicial delay of the government in prosecuting more than 30 months after arrest, and more than 16 months after indictment. Petioner believes this is best effected by a motion for a writ of Habeas Corpus under 2241, but because of confessed ignorance may be in error.

(b)

Is however, the cause for correcting injustice to be ignored for the reason that the government is knowledgable and able to circumvent it's own laws and petitioner is not ?If petitioner is in error and Strunk vs U.S. did not raise the question of prejudicial treatment, then petitioner feels that his application is even stronger, in that the question of prejudical treatment is certainly raised here.

Petition under 2255 requires submission to the same highly prejudical court and would be denied, out of hand, as previously, at a proceeding on September 3, 1971. Section 2241 is felt to be the only remedy allowable in that ~~xxx~~ any court can correct the illegality of imprisonment for prejudical treatment as shown by the previous court and the prosecution.

15. If you answered "yes" to (14), identify

(a) which grounds have been previously presented:

i. Stated in question #14

ii. _____

iii _____

(b) the proceedings in which each ground was raised:

i. Stated in question #14

ii. _____

iii. _____

16. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes

(e) Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes

17. If you answered "yes" to one or more parts of (16). list

(a) the name and address of each attorney who represented you:

i. LEONARD RUBIN, RUBIN & GOLD 199 BROADWAY NEW YORK CITY, NEW YORK
Bail hearings of which i believe there were 4, and bail extension motion, withdrawn because of the behavior of Judge Zavatt.

ii. Johnson & O'Rourke, 93rd. St. & 3rd. Avenue, Bay Ridge, Brooklyn, N.Y. At subsequent arrest and bail revocation hearing, where bail was continued, new charges dismissed, upon ascertaining on the part of the commissioner, Cattaggio that the Petitioner was subjected to a frame up attempt.

iii. Austin Titus, 66 Court Street, Brooklyn, N.Y. called in by Johnson and O'Rourke to take over the trial preperation and defense of petitioner, through various court appearances, pleading and sentencing.

iv. Robert Goldman, Kuh, Goldman & Levitt, 122 East 42nd. Street, N.Y.C. Motion for appeal, brief, argument and decision.

v. At the present time and since January 12, 1973 Petitioner is without legal counsel. Petitioner would ask this court for appointment of counsel But is not aware of the lgal aspects of such.

ii. _____

_____

iii. _____

_____

(b) the proceedings at which each such attorney represented you:

i. Stated in 17 (A) of this portion

ii. _____

iii. _____

18. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, Page 1 of this form) Yes

Arthur Needles

Signature of Petitioner

)
)ss:
)

_____ being first sworn under oath, presents that he has subscribed to the foregoing petition and does state that the information therein is true and correct to the best of his knowledge and belief.

_____
Signature of Affiant

SUBSCRIBED AND SWORN TO
BEFORE ME THIS_____DAY
OF_____
(Month) (Year)

_____
Notary Public

My commission expires_____
(Month, day, year)

(See instructions, Page 1 of this form)

FORMA PAUPERIS AFFIDAVIT

I, ARTHUR NEEDLES do hereby swear that I am a citizen of the United States of America; that because of my poverty I am unable to pay the costs of said suit or action; that I am unable to give security for the same; and that I believe I am entitled to the redress I seek in said suit or action.

Arthur Needles
Signature of Petitioner

)
) ss:
)

_____ being first sworn under oath presents that he has subscribed to the above and does state that the information therein is true and correct to the best of his knowledge and belief.

_____
Signature of Affiant

SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ DAY
OF _____
(Month) (Year)

_____
Notary Public

My commission expires _____
(Month, Day, Year)

73C 1494 DOCKET

SEC. 2255 "a"

WEINSTEIN, J.

TITLE OF CASE	ATTORNEYS
ARTHUR NEEDLES	For Plaintiff: Arthur Needles
vs.	Pro Se
UNITED STATES OF AMERICA	Noyae Road
	Southampton, N.Y. 11968
	For Defendant:

BASIS OF ACTION: Pursuant to Sec. 2255...
(Related Case 70-CR-539)

JURY TRIAL CLAIMED

ON

DATE	PLAINTIFF'S ACCOUNT	RECEIVED		DISBURSED		DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
10-4-73	SEC. 2255	-	-						

ABSTRACT OF COSTS			RECEIPTS, REMARKS, ETC.
TO WHOM DUE	AMOUNT		

630 1494

ARTHUR NEEDLES vs. UNITED STATES OF AMERICA

B

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS	
73	APPLICATION FILED PURSUANT TO SEC. 2255 (Re: 70-CR-539)	1	EG
-73	BY MISHLER, CH. J. MEMORANDUM filed re assignment of matter, etc.	2	
73	Copy of letter of Clerk of Court filed dated Oct.3,1973 acknowledging application, etc.	3	
9-73	Letter of petitioner herein filed dated Oct. 26, 1973, etc. re his application herein.	4	
-73	Copy of letter of WEINSTEIN, J., dated Oct. 31, 1973 addressed to petitioner herein re order by WEINSTEIN, J. ,dated Oct.9,1973.	5	
-73	Letter of petitioner herein filed dated Nov. 5, 1973, etc.	6	
-73	BY WEINSTEIN, J. MEMORANDUM and ORDER FILED. COMPLAINT IS DISMISSED for failure to state a claim for relief. Clerk to xerox exhibits #1 and #2 attached to the complaint returning the original of the exhibits to the palintiff. Action shall proceed in forma pauperis. Clerk will send a copy of this memo., to plaintiff and to the U.S.Atty., SO ORDERED. (See Memo., etc.)	7	
7-73	Letter of petitioner herein filed dated Nov. 14, 1973 together with a memo., by WEINSTEIN, J. that said letter be treated as a NOTICE OF APPEAL herein.	8 & 9	

DATE Jan. 4 1972

Louis Weigel

BY Lyman Rieck

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA ex rel.
ARTHUR NEEDLES,

Petitioner,

-against-

UNITED STATES OF AMERICA,
DEPT. OF JUSTICE AND
FEDERAL BUREAU OF PRISONS,

Respondents.

- -X

MEMORANDUM AND ORDER

73 C 1494

A P P E A R A N C E:

Arthur Needles
Pro Se

Honorable Robert A. Morse
United States Attorney for the Eastern District
of New York
United States Court House
225 Cadman Plaza East
Brooklyn, New York 11201

WEINSTEIN, D.J.

(7)

The Clerk of the Court is directed to file the attached letter, dated November 5, 1973, from Arthur Needles as a civil action, pursuant to section 2255 of title 18 of the United States Code. The letter will be deemed a complaint in that action.

The Clerk will xerox exhibits #1 and #2 attached to the complaint returning the original of the exhibits to the plaintiff. The action shall proceed in forma pauperis.

Plaintiff is dissatisfied with the trial and post-trial proceedings in this court. He gives no specific facts to support his dissatisfaction, but apparently seeks a dismissal so that he can exhaust his remedies here and proceed to the Court of Appeals.

The complaint is dismissed for failure to state a claim for relief.

The Clerk of the Court will send a copy of this Memorandum and Order to the plaintiff and to the United States Attorney.

So ordered.

Dated: Brooklyn, New York
November 7, 1973

U.S.D.J.